HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 3966 of 2001 (M/S)
(Old No. 37361/1994)
Madhav Das and others.

Vs

Chief Controlling and
Revenue Authority U.P.
Allahabad and others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 25.8.2004.

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 3966(MS) of 2001
(Old No. 37361/1994)

Madhav Das and others. .... Petitioners

Vs

Chief Controlling and
Revenue Authority U.P.
Allahabad and others. ..... Respondents

Dated: 25-8-2004

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioners have challenged the orders passed by the Chief Controlling Revenue Authority by which the deficiency of Rs. 93,777.50 and a penalty of Rs. 6620.50 has been confirmed.

Briefly stated the petitioner have purchases the plot consisting of the area of 539.5 sq. mt. as well as 562.5 sq.mt and 648.37 sq. mt. on various dates. The stamp duty has been paid on valuation of Rs. 12,10,500.00 and has paid the stamp duty on the market rate.

The detail have been given in paragraph 6 of the writ petition, the same is quoted below:-

> *"That, on result of the notice the petitioners submitted their reply/objection to the said notice and it was said that there is not basis in the report of the Deputy Chief Inspector. No reason has been given to suspect deficit of the stamp duty. According to the Nagar Palika, itself yearly assessment of the entire property is Rs. 48,000/-. In accordance to the provisions of Section*

341(3) the Act, the stamp duty had been paid. The property is a very old construction of the year 1961. The property is also hit by provisions of the U.P. Roadside Control Act and Master Plan."

Petitioner have submitted that for ascertaining the market value, the assessment of Nagar Palika is to the extent of Rs. 48,000/- per annum.

The relevant observation to that effect is quoted below:-

"विपक्षी के अधिवक्ता का कथन है कि प्रश्नगत सम्पत्ति 4 विक्रय पत्र में क्रय की गई है तथा सम्पत्ति वर्ष 1961 से पूर्व की निर्मित है तथा सम्पत्ति का सम्पूर्ण भाग निर्मित है जिसका नगर पालिका निर्माण के अनुपात अनुसार विक्रयपत्रों का मूल्यांकन असैसमैंट के 25 गुना 12,00,000/— से अधिक धनराशि 12,10,500/— रूपये कर किया गया है तथा 1,75,535/— का स्टाक शुल्क दिय गया है जो सम्पत्ति का स्टाक नियमावली के अनुसार वाजिब मूल्य है।"

Against the Revisional order the petitioners approached to the High Court in writ petition No. 27 of 1992 . The writ petition was dismissed with the following observations:-

"Learned Counsel for the petitioner submit that there is an observation in the order of the revisional authority that it is a common knowledge that the assessment by Nagar Palika is always on the lower side and this cannot be the basis of the valuation of the property on the date of sale." The learned counsel submits this observation is lively to prejudice the case of the petitioner and if this observation, is allowed to

remains the authorities below shall be prejudice and pass orders against the petitioner. The submission is misconceived. Such an observation in the order is merely an observation and is not binding. I, however, make it further clear that the authorities shall not treat that said observation as sacrosanct and binding. There is no illegality or error in the order of remand of the revisional court."

Section 47-A of the Stamp Act reads as under:-

"*47-A. Instruments of Conveyance, etc, if under-valued how to be dealt with.-(1) If the market value or any property, which is the subject of any instrument [on which duty is chargeable on the market value of the property], as set forth in such instrument [is less than even the minimum value determined in accordance with any rules made under this Act], the registering officer appointed under the Indian Registration act, 1908, shall refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.*"

"*Without prejudice to the provisions of sub-section (1) if such registering officer which registering any instrument [on which duty is chargeable on the market value of the property], has reason to believe that the market value of the property which is the subject [of such instrument], has not been truly set forth in the instrument, he may, after registering such instrument,*

refer the same to the collector for determination of the market value of such property and the proper duty payable thereon."

On receipt of a reference under sub-section (1) or sub-section (2) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject [of the instrument] and the duty as aforesaid. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.

"The Collector may, suo motu [or on a reference from any Court or from the] [Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any Officer authorized by the Board of Revenue in that behalf] within[four years] from the date of registration of any instrument [on which duty is chargeable on the market value of the property] not already referred to him under sub-section (1) or sub-section(2), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject [of such instrument] and the duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market

value of such property and the duty payable thereon in accordance with the procedure provided for in sub-section (3). The difference,if any, in the amount of duty, shall be payable by the person liable to pay the duty.]

The Revisional Court has dismissed the revision. After hearing the counsel for the parties, it appears that there was no other available evidence with the respondent except the assessment of Rs. 48,000/-. U.P. Stamp Rules of 341 (3) (a) is quoted below:-

"For the purpose of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift settlement, award or trust, referred to in Section 47 –A (1) of the Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below:-

"Where the subject is building;

(a) Where the building is assessed to house tax and is occupied by the owner or is wholly or partly let our to tenants – 25 times the actual or assessed annual rental value, whichever is higher as the case may be.

A perusal of the order shows that Rules 341 with regard to 25 times of the actual assessment of the annual rental value has not been taken into consideration.

In view of the aforesaid fact, a writ of certiorari is issued quashing the orders dt. 3-10-1994 and 10-3-1993.

The matter is sent back to the Collector for deciding the case a fresh in the light of the observation made above.

Subject to the aforesaid observation, the writ petition is allowed. No order as to costs.

Dated: 25-8-2004 **(RAJESH TANDON J.)**

M.K.